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FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

MAR 31 1992

Federal Communications Commission  
Office of the Secretary

In the Matter of )  
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Tariff Filing Requirements for ) CC Docket No. 92-13  
Interstate Common Carriers )

**COMMENTS OF THE  
ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES  
IN SUPPORT OF THE COMMISSION'S POLICY OF FORBEARANCE**

The Association for Local Telecommunications Services ("ALTS"), by its undersigned counsel and pursuant to the Commission's Notice of Proposed Rulemaking of January 28, 1992<sup>1/</sup> ("NPRM"), hereby submits its comments supporting retention of the Commission's policy of forbearance, under which the Commission forbears from requiring a wide variety of nondominant domestic communications common carriers from filing interstate tariffs.

**I. INTRODUCTION**

ALTS is the non-profit national trade organization representing providers of competitive access services. Founded in 1987, ALTS was formed to promote public policies that foster the expeditious development of state-of-the-art local telecommunications services. ALTS currently counts among its members 24 nondominant competitive access providers ("CAPs") that deploy innovative technologies -- including fiber optic and

<sup>1/</sup> Tariff Filing Requirements for Interstate Common Carriers, CC Docket No. 92-13, FCC 92-35 (released January 28, 1992).

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microwave networks -- in over forty metropolitan areas across the country. ALTS members have begun to introduce cutting edge technology into local telecommunications markets to provide users with the highest quality, most secure and most customer-responsive local telecommunications services currently available, and in doing so, attempt to compete directly with dominant local exchange carriers ("LECs").

As the voice of an industry that is just beginning to bring competitive alternatives to local telecommunications service markets historically monopolized by the LECs, ALTS is critically concerned that the Commission's rules and policies promote a national business environment that is consistent with the entry of new, innovative and entrepreneurial communications companies, such as CAPs. It is out of this concern that ALTS strongly urges the Commission to retain its long-established policy of forbearance, and to avoid the imposition of costly and unnecessary new regulatory burdens upon the members of the competitive access industry.

**II. FORBEARANCE REGULATION FOR NONDOMINANT CARRIERS IS FULLY IN ACCORD WITH THE LETTER AND THE SPIRIT OF THE COMMUNICATIONS ACT**

The NPRM responds to arguments raised by AT&T in a complaint filed against MCI, in which AT&T alleges that the Commission's forbearance policy is inconsistent with section 203(a) of the Communications Act, which requires that "[e]very common carrier, except connecting carriers, shall . . . file with

the Commission . . . schedules showing all charges for itself and its connecting carriers for interstate and foreign wire or radio communication . . . ."<sup>2/</sup> That interpretation of the Communications Act is premised in large part on the Maislin Industries<sup>3/</sup> case, a recent Supreme Court decision that interpreted a similar provision from the Interstate Commerce Act ("ICA"). In Maislin, the Court held that, under the ICA, the Interstate Commerce Commission lacked authority to provide service on an off-tariff basis. AT&T argues that the Maislin decision compels a similar reading of the Communications Act, and prohibits the Commission from forbearing to impose mandatory tariffing requirements on nondominant carriers. The Maislin decision is not binding on the Commission, however, and, as ALTS shows below, the AT&T interpretation of the Communications Act is wholly without merit.

The plain language of the Communications Act makes clear that tariffing requirement found in subsection (a) of Section 203 is not absolute, but may be changed by the Commission. Specifically, Section 203 is modified by subsection (b), which explicitly states that "[t]he Commission may, in its discretion and for good cause shown, modify any requirement made by or under the authority of this section either in particular

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<sup>2/</sup> 47 U.S.C. § 203(a).

<sup>3/</sup> Maislin Industries, U.S., Inc. v. Primary Steel, Inc., 110 S. Ct. 2759 (1990).

instances or by general order applicable to special circumstances or conditions . . . ."<sup>4/</sup>

Similarly, subsection (c) makes clear that the Commission may exercise its discretion in requiring the filing of tariffs: "No carrier, unless otherwise provided by or under authority of this Act, shall engage or participate in [interstate] communication unless schedules have been filed and published in accordance with the provisions of this Act. . . ."<sup>5/</sup>

When read in conjunction with subsection (a) of Section 203, subsections (b) (2) and (c) unequivocally provide the Commission with the authority to allow communications common carriers to provide service other than on a tariffed basis. Indeed, the "unless otherwise provided" language of subsection (c), noted above, would be rendered meaningless if the Commission lacked the authority to forbear from imposing the tariffing requirement of subsection (a). Thus, the plain language of Section 203 of the Communications Act supports the Commission's forbearance policy.<sup>6/</sup>

Moreover, recent Congressional action supports the interpretation of Section 203 as permitting forbearance. As the

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<sup>4/</sup> 47 U.S.C. § 203(b) (2) .

<sup>5/</sup> 47 U.S.C. § 203(c) (emphasis added) .

<sup>6/</sup> Significantly, the provision of the Interstate Commerce Act that imposes the tariffing requirement similar to Section 203(a) of the Communications Act is not modified to the extent that Section 203(a) of the Communications Act is modified by subsections (b) and (c) .

NPRM notes, the Congress recognized the Commission's forbearance policy when it enacted the Telephone Operator Consumer Services Improvement Act of 1990.<sup>2/</sup> That Act requires providers of operator services to file "informational tariffs" with the Commission, and imposes tariff filing requirements considerably more lenient than those required by Section 203 of the Act. Significantly, the Congress authorized the Commission to discontinue -- or to forbear from enforcing -- the informational tariffing requirement in the future if it finds it unnecessary.

The requirement of informational tariffs constitutes Congressional recognition of the Commission's forbearance policy -- operator service providers obviously would not be required to file informational tariffs under Section 226 of the Act if Section 203 already required them to file full tariffs. Moreover, the explicit provision for Commission authority to forbear from requiring the filing of informational tariffs in the future simply mirrors the similar exercise of the Commission's discretion granted under subsections 203(b) and (c). Thus, the plain language of the Communications Act provides support for the continued application of the Commission's forbearance policy.

### **III. FORBEARANCE REGULATION FOR NONDOMINANT CARRIERS IS SOUND PUBLIC POLICY**

As ALTS has described in other comments filed before the Commission, the CAP share of the total local exchange market

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<sup>2/</sup> 47 U.S.C. § 226.

is far less than one percent.<sup>8/</sup> The competitive pressures faced by the members of ALTS as new entrants into largely monopoly markets are extraordinary, and exclude the possibility that CAPs may engage in ratemaking practices that contravene the Communications Act. The pricing discipline imposed by the competitive access markets therefore renders mandatory tariffing for nondominant carriers wholly unnecessary.

Moreover, imposition of tariffing requirements on CAPs would profoundly disserve the public interest. Competitive access companies face monumental impediments to market entry: enormous capital costs, the need to change the perceptions of customers used to dealing with a single monopoly service provider, and aggressive price competition from the dominant LECs.<sup>9/</sup> In light of these obstacles, the typical CAP may not see an operating profit for several years after entering a market, and must manage its resources responsibly.

Imposition of a mandatory tariffing obligation would impose a substantial economic burden on such carriers. The costs associated with the preparation and maintenance of federal tariffs -- legal and consulting fees, the diversion of personnel, the filing fees -- constitute an expense that CAPs can ill

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<sup>8/</sup> Comments of the Association for Local Telecommunications Services (ALTS), 3-5, filed in CC Docket No. 91-141 on August 6, 1991.

<sup>9/</sup> Unlike LECs, CAPs do not generate their cash flow from a base of captive ratepayers, and are wholly incapable of subsidizing their operations with revenues from monopoly services.

afford. Indeed, these expenses add nothing to the CAPs' ability to provide service, and would serve only to artificially inflate the costs of CAP service to the public.

The Commission has long recognized that unnecessary regulation impedes the development of competition and disservices the public interest.<sup>10/</sup> Similarly, Congress consistently has evinced a similar concern through its legislation. The Record Carrier Competition Act of 1981, which was passed to promote competition among record carriers, mandated that "the Commission shall forbear from exercising its authority under this Act as the development of competition among record carriers reduces the degree of regulation necessary to protect the public."<sup>11/</sup> Another example is found in the Paperwork Reduction Act, which was established to "minimize the Federal paperwork burden for individuals, small businesses, State and local governments, and other persons . . . ."<sup>12/</sup>

Finally, the imposition of mandatory tariffing on nondominant carriers would be administratively unworkable, and would serve no practical regulatory purpose. The Commission initially adopted its forbearance policy in part out of a realization that failure to forbear would impose tariffing obligations on the thousands of nondominant common carriers

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<sup>10/</sup> See, e.g., Competition in the Interstate Interexchange Market, 6 FCC Rcd 5880 (1991).

<sup>11/</sup> 47 U.S.C. § 222(b)(1).

<sup>12/</sup> 44 U.S.C. § 3501, et seq.

operating across the country.<sup>13/</sup> The Commission simply does not have the resources to maintain such a huge volume of filings, to say nothing of actively reviewing the rates contained in them. In fact, the Commission could not possibly ensure that it would oversee such a volume of tariffs with any degree of consistency, fairness or effectiveness.

In sum, imposition of a tariffing requirement on nondominant carriers is unnecessary, would retard the development of competition and innovation in new communications markets, and would be administratively unworkable. As such, the public interest demands that the Commission retain its policy of forbearance.

**IV. IF THE COMMISSION FINDS FORBEARANCE TO BE UNLAWFUL, IT  
SHOULD ADOPT MAXIMUM STREAMLINED REGULATION FOR CAPS**

If the Commission should find that continuance of its forbearance policy is unlawful -- and as ALTS has discussed above, such a finding is not supported by legal or policy considerations -- the Commission should minimize the filing burden on nondominant carriers to the greatest extent possible. ALTS respectfully requests that, if the Commission terminates its forbearance policy, it adopt maximum streamlined regulation for nondominant carriers. Such regulation would allow CAPs and other nondominant carriers to effect rate changes or introduce new

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<sup>13/</sup> Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, 91 F.C.C.2d 59, 63 (1982).



services on one day's notice, would not require cost support, and would establish a strong presumption of lawfulness for the filings. The Commission should also allow nondominant carriers wide discretion in designing their rate structures, and should approve individual contract arrangements. Moreover, the Commission should amend its rules against cross-referencing other carriers' tariffs to allow groups of similarly situated carriers to concur in a single tariff. Finally, the Commission should substantially reduce its filing fees for nondominant carriers.

V. CONCLUSION

For the foregoing reasons, ALTS respectfully requests that the Commission find that its forbearance policy is lawful and in compliance with the Communications Act and terminate the instant proceeding.

Respectfully submitted,

/s/John C. Shapleigh  
John C. Shapleigh  
President and General Counsel  
Association for Local  
Telecommunications Services

Attorneys for ALTS:  
Andrew D. Lipman  
Jonathan E. Canis  
Swidler & Berlin, Chartered  
3000 K Street, N.W.  
Suite 300  
Washington, D.C. 20007  
(202) 944-4300

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CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of March 1992,  
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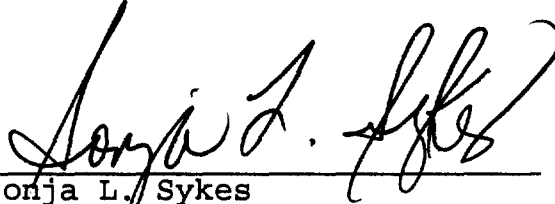
Richard M. Firestone, Chief  
Common Carrier Bureau  
Federal Communications  
Commission  
1919 M Street, N.W.  
Room 500  
Washington, D.C. 20554

James D. Schlichting, Chief  
Policy and Program Planning  
Division  
Federal Communications  
Commission  
1919 M Street, N.W.  
Room 544  
Washington, D.C. 20554

Gary Phillips, Esq.  
Policy and Program Planning  
Division  
Federal Communications  
Commission  
1919 M Street, N.W.  
Room 544  
Washington, D.C. 20554

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1919 M Street, N.W.  
Room 246  
Washington, D.C. 20554

Andre Lachance, Esq.  
Policy and Program Planning  
Division  
Federal Communications  
Commission  
1919 M Street, N.W.  
Room 544  
Washington, D.C. 20554

  
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Sonja L. Sykes